

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BENJAMIN WHITNEY USELTON,)	Case No.: 1:05 CV 179
)	
Petitioner)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
MARGARET BRADSHAW, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On February 2, 2005, Petitioner Benjamin Uselton (“Petitioner” or “Uselton”) brought this *pro se* action pursuant to 28 U.S.C. § 2254, (ECF No.1), challenging the constitutionality of his April 4, 2003 conviction, on two counts of involuntary manslaughter and three counts of drug trafficking. On May 23, 2003, Uselton was sentenced to two consecutive five-year terms for the involuntary manslaughter convictions, consecutive to three concurrent nine-month terms for the trafficking in drugs convictions. Uselton’s aggregate sentence was ten years and nine months. The case was referred to Magistrate Judge David S. Perelman for preparation of a report and recommendation.

On September 13, 2005, the Magistrate Judge issued a Report and Recommendation, recommending that final judgment be entered in favor of the Respondent and that Uselton’s Petition be denied. (ECF No. 12.) The Magistrate Judge concluded that the equal protection portion of each ground for relief was barred from this court’s consideration absent a showing of cause for failure

to fairly present it and actual prejudice to Petitioner's case, neither of which were proffered by Petitioner. Additionally, the Magistrate Judge determined that the *Apprendi* claim in Petitioner's third ground for relief was barred from this court's consideration absent a showing of cause and prejudice, which was not made by Petitioner. The Magistrate Judge recommended that the remainder of Petitioner's claims be denied on the merits.

Petitioner filed Objections to the Report and Recommendation on December 7, 2005 (ECF No. 17).

After carefully reviewing the Report and Recommendation, Petitioner's Objections, and all other relevant materials in the file, the court finds that the Magistrate Judge's conclusions are fully supported by the record and the controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation (ECF No. 12). Uselton's Petition for Writ of Habeas (ECF No.1) is hereby denied on the merits with regard to all claims, except for those portions in which Uselton seeks to assert equal protection claims and an *Apprendi* claim, which are denied for failure to exhaust.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

December 12, 2005